

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Escrow Agent License of:

No. 10F-BD044-BNK

3 **NEW LAND TITLE AGENCY, L.L.C.**
1910 South Stapley Drive, Suite 236
4 Mesa, Arizona 85204

CONSENT ORDER

5 Petitioner.

6
7 On June 24, 2010, the Arizona Department of Financial Institutions ("Department") issued a
8 Notice of Hearing, alleging that Petitioner had violated Arizona law. Wishing to resolve this matter
9 in lieu of an administrative hearing, Petitioner consents to the following Findings of Fact and
10 Conclusions of Law, and consents to the entry of the following Order.

11 **FINDINGS OF FACT**

12 1. Petitioner New Land Title Agency, L.L.C. ("New Land") is an Arizona limited liability
13 company that is authorized to transact business in Arizona as an escrow agent, license number
14 0910075, within the meaning of A.R.S. §§ 6-801, *et seq.* The nature of New Land's business is that
15 an escrow agent, within the meaning of A.R.S. § 6-801(5).

16 2. An examination of Petitioner conducted by the Department from July 1 to July 14, 2009
17 revealed that Petitioner:

18 a. Failed to authorize Bank of America to notify the Superintendent of any overdrafts or
19 checks returned for insufficient funds in any trust accounts of the escrow agent,
20 specifically, the account ending #3119 did not have the proper authorization until it
21 was provided during the examination;

22 b. Commingled corporate funds belonging to the licensee with escrow funds,
23 specifically:

24 i. Petitioner opened its trust account with a deposit of ten thousand dollars
25 (\$10,000.00) to Bank of America. This money was in the account from July
26 24, 2008 until some time during the examination;

- c. Failed to provide complete and adequate escrow trial balance detail during the examination. The escrow trial balance was missing both the opening and closing dates. Petitioner has since provided a supplemental report;
- d. Failed to provide proof that each depositing buyer, within three (3) business days after receipt of deposited monies, was provided notice of their right to earn interest on all monies deposited into the escrow;
- e. Failed to provide the Department with any documentation that any local audit was ever done. Specifically, Petitioner provided the Department's examiners with the 12-31-08 CPA annual audit of the parent company and an unsigned copy of an engagement letter with a local CPA firm which was to audit the local escrow account activities and follow generally accepted accounting principles. The scope of the audit included consideration of the company's internal control structure in accordance with generally accepted auditing standards. The audit was to have begun on February 20, 2009.

3. Based upon the above Findings, the Department issued and served upon Petitioner an Order to Cease and Desist; Notice of Opportunity for Hearing; Consent to Entry of Order on March 25, 2010.

4. The Department received Petitioner's request for a hearing to appeal the Cease and Desist Order on April 12, 2010.

CONCLUSIONS OF LAW

1. Pursuant to A.R.S. §§ 6-801, *et seq.*, the Superintendent has the authority and duty to regulate all persons engaged in the escrow agent business and with the enforcement of statutes, rules, and regulations relating to escrow agents.

2. By the conduct set forth above in the Findings of Fact, New Land has violated the following:

- a. A.R.S. § 6-817(A)(14), by failing to authorize Bank of America to notify the

1 Superintendent of any overdrafts or returned checks for insufficient funds in any trust
2 accounts of the escrow agent, specifically, the account ending in #3119;

3 b. A.R.S. §§ 6-823(A), 6-834(B) and 6-841.01(A), by commingling corporate funds
4 belonging to the licensee with escrow trust funds;

5 c. A.R.S. §§ 6-834(A), 6-841, A.A.C. R20-4-702 and A.A.C. R20-4-704, by failing to
6 provide complete and adequate trial balance detail during the examination;

7 d. A.R.S. § 6-834(D), by failing to provide proof that each depositing buyer, within
8 three (3) business days after receipt of deposited monies, was provided notice of their
9 right to earn interest on all monies deposited into escrow; and

10 e. A.R.S. § 6-832, by failing to provide any documentation that any local audit was ever
11 done.

12 3. The violations, set forth above, constitute grounds for: (1) the issuance of an order
13 pursuant to A.R.S. § 6-137 directing Petitioner to cease and desist from the violative conduct and to
14 take the appropriate affirmative actions, within a reasonable period of time prescribed by the
15 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
16 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the
17 suspension or revocation of Petitioner's license pursuant to A.R.S. § 6-817; (4) an order to pay
18 restitution of any fees earned in violation of A.R.S. §§ 6-801, *et seq.*, pursuant to A.R.S. §§ 6-
19 131(A)(3) and 6-137; and (5) an order or any other remedy necessary or proper for the enforcement
20 of statutes and rules regulating mortgage brokers in Arizona pursuant to A.R.S. §§ 6-123 and 6-131.

21 4. Pursuant to A.R.S. § 6-132, Petitioner's violations of the aforementioned statutes are
22 grounds for a civil penalty of not more than five thousand dollars (\$5,000.00) for each violation for
23 each day.

24 **ORDER**

25 1. New Land shall immediately stop the violations set forth in the Findings of Fact and
26 Conclusions of Law. Petitioner:

- 1 a. Shall ensure that any banking institutions where Petitioner keeps trust accounts are
2 authorized to notify the Superintendent of any overdrafts or checks returned for
3 insufficient funds;
4 b. Shall not commingle corporate funds belonging to the licensee with escrow trust
5 funds;
6 c. Shall provide complete and adequate escrow trial balance detail;
7 d. Shall provide to each depositing buyer, within three (3) business days after receipt of
8 deposited monies, the notice of their right to earn interest on all monies deposited into
9 the escrow; and
10 e. Shall engage a local CPA firm to do the annual audit of the escrow fiduciary accounts
11 and internal controls according to generally accepted accounting principles and
12 auditing standards and provide documentation to the Department that a local audit is
13 completed for all future audits.

14 2. New Land shall immediately pay to the Department a civil money penalty in the amount
15 of **five thousand dollars (\$5,000.00)**.

16 3. The provisions of this Order shall be binding upon Petitioner, and resolves the Notice of
17 Hearing, subject to Petitioner's compliance with the requirements of this Order. Should Petitioner
18 fail to comply with this Order, the Superintendent shall initiate further disciplinary proceedings.


19 4. The provisions of this Order shall be binding upon Petitioner, its employees, agents, and
20 other persons participating in the conduct of the affairs of New Land Title Agency, L.L.C.

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26 ...

1 5. This Order shall become effective upon service, and shall remain effective and
2 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated,
3 or set aside.

4 SO ORDERED this 4 day of August, 2010.

5 Lauren Kingry
6 Superintendent of Financial Institutions

7 By 
8 Robert D. Charlton
9 Assistant Superintendent of Financial Institutions

9 **CONSENT TO ENTRY OF ORDER**

10 1. Petitioner acknowledges that it has been served with a copy of the foregoing Findings of
11 Fact, Conclusions of Law, and Order in the above-referenced matter, has read the same, is aware of
12 its right to an administrative hearing in this matter, and has waived the same.

13 2. Petitioner admits the jurisdiction of the Superintendent and consents to the entry of the
14 foregoing Findings of Fact, Conclusions of Law, and Order.

15 3. Petitioner states that no promise of any kind or nature has been made to induce it to
16 consent to the entry of this Order, and that it has done so voluntarily.

17 4. Petitioner agrees to cease from engaging in the violative conduct set forth above in the
18 Findings of Fact and Conclusions of Law.

19 5. Petitioner acknowledges that the acceptance of this Agreement by the Superintendent is
20 solely to settle this matter and does not preclude this Department, any other agency or officer of this
21 state or subdivision thereof from instituting other proceedings as may be appropriate now or in the
22 future.

23 6. Michael Kehoe, on behalf of New Land Title Agency, L.L.C., represents that he is the
24 President, and that, as such, has been authorized by New Land to consent to the entry of this Order
25 on its behalf.

26 ...

1 7. Petitioner waives all rights to seek judicial review or otherwise to challenge or contest the
2 validity of this Order.

3 DATED this 26th day of July, 2010.

4
5 By Michael P. Kehoe
6 Michael P. Kehoe, President
7 New Land Title Agency, L.L.C.

8 ORIGINAL of the foregoing filed this 26th
9 day of August, 2010, in the office of:

10 Lauren Kingry
11 Superintendent of Financial Institutions
12 Arizona Department of Financial Institutions
13 ATTN: Susan L. Longo
14 2910 N. 44th Street, Suite 310
15 Phoenix, AZ 85018

16 COPY mailed same date to:

17 Lewis D. Kowal, Administrative Law Judge
18 Office of the Administrative Hearings
19 1400 West Washington, Suite 101
20 Phoenix, AZ 85007

21 Erin O. Gallagher
22 Assistant Attorney General
23 Office of the Attorney General
24 1275 West Washington
25 Phoenix, AZ 85007

26 Robert D. Charlton, Assistant Superintendent
Arizona Department of Financial Institutions
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New Land Title Agency, L.L.C.
20830 N. Tatum Blvd., Ste. 250
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Petitioner

25 Susan Longo
26 #882250